



## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9844-5]

### Proposed Consent Decree, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended (CAA or the Act), notice is hereby given of a proposed consent decree to address a lawsuit filed by Sierra Club (Plaintiff) in the United States District Court for the District of Columbia: Sierra Club v. Jackson, No.1:12-cv-01237-ESH (D.D.C.). On or about July 26, 2012, the plaintiff filed a complaint alleging that EPA had failed to take action on certain State Implementation Plan (SIP) submittals by the states of New Jersey and Michigan. Specifically, the complaint alleged that EPA had failed to make a finding that the state of New Jersey did not submit SIP revisions addressing the nonattainment New Source Review requirements for the 1997 fine particulate matter National Ambient Air Quality Standard (1997 PM<sub>2.5</sub> NAAQS) in the State of New Jersey portion of the Philadelphia-Wilmington nonattainment area. The complaint further alleged that EPA had failed to take final action on the attainment demonstration, contingency measures, emission inventory and Reasonably Available Control Measures or Reasonably Available Control Technology (RACM/RACT), requirements for the 1997 PM<sub>2.5</sub> NAAQS in both the State of Michigan's SIP submittal for the Detroit-Ann Arbor nonattainment area and the New Jersey SIP submittal for the State of New Jersey portion of the Philadelphia-Wilmington nonattainment area. The complaint also alleged that EPA failed to publish a notice of determination in the Federal Register regarding whether the Detroit-Ann Arbor area had attained the 1997 PM<sub>2.5</sub>

NAAQS by the applicable attainment date. The proposed consent decree establishes deadlines for EPA to take certain actions.

**DATES:** Written comments on the proposed consent decree must be received by [insert date 30 days after publication in the Federal Register].

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-HQ-OGC-2013-0553, online at [www.regulations.gov](http://www.regulations.gov) (EPA's preferred method); by e-mail to [oei.docket@epa.gov](mailto:oei.docket@epa.gov); mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** Winifred N. Okoye, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-5446; fax number (202) 564-5603; email address: [okoye.winifred@epa.gov](mailto:okoye.winifred@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Additional information about the proposed consent decree.**

The proposed consent decree would resolve a lawsuit seeking to compel action by the Administrator to take final action under section 110(k)(3) and (4), 42 U.S.C. 7410(k)(3) and (4), to approve or disapprove, in whole or in part certain States of New Jersey and Michigan SIP submittals.

The proposed consent decree requires EPA, on or before September 30, 2013, to sign and thereafter promptly forward to the Office of Federal Register for review and publication a notice of final action addressing whether the State of New Jersey has failed to submit SIP revisions addressing the nonattainment New Source Review requirements for the 1997 PM<sub>2.5</sub> NAAQS in the State of New Jersey portion of the Philadelphia-Wilmington nonattainment area. The proposed consent decree also requires EPA, on or before November 30, 2013, to sign and thereafter promptly forward to the Office of Federal Register for review and publication a notice taking final action on the attainment demonstration, contingency measures, emission inventory and Reasonably Available Control Measures or Reasonably Available Control Technology (RACM/RACT), requirements for the 1997 PM<sub>2.5</sub> NAAQS in the State of New Jersey SIP submittal for the State of New Jersey portion of the Philadelphia-Wilmington nonattainment area. EPA is not required, however, to act on any submission or portion thereof that is withdrawn prior to the applicable deadline. Because the state of Michigan withdrew its SIP submission for the attainment demonstration for the Detroit-Ann Arbor 1997 PM<sub>2.5</sub> nonattainment area, on May 20, 2013, the proposed consent decree does not require EPA to act on this submission or any portion thereof.

The proposed consent decree also states that the consent decree can be modified by either the parties, or the court following a motion by a party and a response thereto. In addition, the parties agree to informally resolve Sierra Club's claim for litigation costs pursuant to section 304(d), 42 U.S.C. 7604(d), but that the court would retain jurisdiction to resolve that claim.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of

Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment which may be submitted, that consent to the consent decree should be withdrawn, the terms of the decree will be affirmed.

## **II. Additional information about commenting on the proposed consent decree.**

### *A. How Can I Get A Copy Of the Consent Decree ?*

Direct your comments to the official public docket for this action under Docket ID No. EPA-HQ-OGC- 2013-0553, which contains a copy of the consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through [www.regulations.gov](http://www.regulations.gov). You may use the [www.regulations.gov](http://www.regulations.gov) to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select “search,” then key in the appropriate docket identification number.

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at [www.regulations.gov](http://www.regulations.gov) without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and

other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

*B. How and To Whom Do I Submit Comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the [www.regulations.gov](http://www.regulations.gov) website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or

other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: July 31, 2013.

Lorie J. Schmidt,  
Associate General Counsel.

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